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Remarks

The specification is being amended to properly reflect the serial number and filing date of the related application.

The Examiner's rejection of the application is for obviousness-type double patenting over US Patent Application Publication 2003/143954, filed by Dettinger et al. (which is the related application referenced by this application). The Examiner cites Dettinger as "teaching" a method of controlling the response of a wireless device involving providing a device capable of audibly responding and networking the device with a second device. The Examiner concedes, however, that Dettinger et al. fails to "teach" a method wherein a device networks with other devices, samples the sound pressure level through a microphone, and selectively modifies its own audible response based on a count of the number of other networked devices and the sampled sound pressure level. The Examiner then asserts that this additional conceptual material is taught by Westerhuis.

Applicant disagrees with the Examiner's rejection and requests reconsideration.

First, Applicant notes that the Examiner's rejection over Dettinger appears to be based on what is claimed by Dettinger, as the rejection is for double patenting. Dettinger contains disclosure that is identical to the present application

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(this application and Dettinger respectively incorporate each other by reference), including disclosure of modifying the response of a device based upon a count of the number of networked devices and a measured sound pressure level. However, the claims of Dettinger are not directed to this subject matter, but rather differ from the claims of the present application in the manner noted by the Examiner.¹ Applicant believes the Examiner's inquiry was directed to a double patenting comparison of the claims of Dettinger and the claims of the present application, as is appropriate.

In concluding the claims of Dettinger render the claims of the present application obvious, the Examiner has relied upon Westerhuis as showing that a "[m]agnetic strip senses in the neighborhood of the number of portable terminal, and when the call comes activates the newly selected notification type and deactivates of a formally active notification, the notification type control device CTRL-2 deactivates the light emitting diode

¹ Dettinger is not 102(e) prior art to the present application, as the two applications were filed simultaneously with each other. Furthermore, even were the subject matter claimed by Dettinger, which was invented by Dettinger and Kulack, prior art to the subject matter claimed by the present application, which was invented by Humphrey and Moore, Applicant submits that the subject matter claimed in this application is not obvious in light of the subject matter claimed by Dettinger and Kulack.

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LED2 and activates the speaker (col 7 section 0036). Therefore, it would have been obvious to ordinary skill in the art at the time the invention is made to combine the above teaching with Dettinger, in order to use of the digital radio bandwidth to broadcast multiple content on a single station".

Applicant does not understand the Examiner's rejection. It appears the Examiner's view is that Westerhuis discloses a device networking with other devices to make a count of a number of other devices, and then detecting sound pressure level and using the count and sound pressure level to modify an audible response. This is not what Westerhuis describes.

Westerhuis describes a portable "terminal" (phone) that automatically changes its ring notification based upon one of (a.) the presence of a magnetic strip near the telephone, such as in a chair of a meeting room, jacket pocket, or desk drawer (col. 2, paragraphs 11-12), (b.) the vertical or horizontal position of the phone (col. 3, paragraphs 17-18). There is no suggestion in Westerhuis that a portable device would network to other portable devices and/or sense sound pressure level, much less use a count of networked device and sound pressure level to adjust its audible responses.

As Westerhuis does not describe the claimed concepts of this application, Applicant submits that the Examiner's double

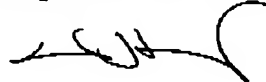
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patenting rejection based upon Dettinger combined with Westerhuis must fail. Applicant therefore requests issuance of a Notice of Allowability.

If any petition for extension of time is necessary to accompany this communication, please consider this paper a petition for such an extension of time, and apply the appropriate extension of time fee to Deposit Account 23-3000. If any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,



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